

Attorney Docket No.: M2341

App. Ser. No.: 10/705,342  
Filing Date: November 10, 2003  
Inventor: Minges, Marcus C.  
Title: Rail Mounted Traversing  
Transport  
Examiner: Jules, F.  
Art Unit: 3617

IN THE UNITED STATES PATENT  
AND TRADEMARK OFFICE

**Amendment in Patent Application**

Submission in Connection with RCE

**FAX RECEIVED**

JUL 05 2005

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

**OFFICE OF PETITIONS**

The above identified applicant respectfully requests the Commissioner of Patents consider the enclosed remarks and enter the following submission into the record. Further examination in light of this submission is respectfully requested. If the Examiner requires additional action that may benefit from a telephone call, Applicant invites a call to its attorney of record, Nathan W. Johnson (Reg. No. 44,173). E-mail correspondence and transactions to [NJohnson@BradleyArant.com](mailto:NJohnson@BradleyArant.com) are authorized and encouraged.

**Amendments to the Specification – Begin on Page 2 of this paper**

**Amendments to the Claims – None.**

**Amendments to the Drawings – None.**

**Remarks/Arguments begin on Page 3 of this paper.**

**An Appendix, being a Terminal Disclaimer, is attached after page 6 of this paper.**

## Specification Amendments

Please replace the Abstract with the following:

A transportation system is provided that accommodates varying angles of slope along the path of its movement, while maintaining a level transportation platform without the need of mechanical leveling devices or systems. The platform may be connected to the rail by wheels that are held in a substantially fixed relationship to one another, the closest of which to the platform is above the rail, and the other below the rail. Accordingly, the platform is torqued downward to maintain contact between the wheels and the rail. As the slope of the terrain, and thus the slope of the rail, increases, the rail is widened to maintain the platform at level. As the slope decreases, the rail is narrowed to the same effect. The platform also may be tilted for loading or unloading by this rail-widening method, as may be desired.

Please replace paragraph [0038] with the following paragraph:

[0038] Figure 8 shows how the present invention builds upon the effect demonstrated above. In ~~in~~ Figure 8 a wheel is shown at the end of platform 2 for supporting platform 2 on rail 1 when both rail 1 and platform 2 are horizontally disposed. By increasing the gauge of rail 1 as the slope of the rail increases, platform 2 attached to housing 5 is maintained at level. As described above, the distance between overwheel 4 and underwheel 3 is substantially constant. In one embodiment, when platform 2 is level the top of underwheel 3 and the bottom of overwheel 4 will be separated by a vertical distance (not necessarily the length of imaginary line 10) at least as great as the largest vertical gauge of rail 1 at any point along which the transport device is intended to travel with a level platform 2. If the operator desires that at some point along the path of travel, the end of platform 2 furthest from rail 1 should dip below the end of platform 2 that is closest to rail 1, the vertical separation of overwheel 4 and underwheel 3 should be greater than the gauge of rail 1 at that point. Similarly, if the operator desires that the end of platform 2 furthest from rail 1 be above the end of platform 2 that is closest to rail 1 at some point, the vertical separation of overwheel 4 and underwheel 3 should be less than the gauge of rail 1 at that point.

### **Argument**

Reconsideration and further examination of the application is respectfully requested.

**Status:** Claim 4 is presently allowed in this Application. All other claims have been cancelled. The Application has been allowed, but Applicant requested withdrawal from issue to allow entry of the amendments herein and to ensure consideration by the Commissioner of the potential need for a terminal disclaimer to address any possibility of an obviousness-type double-patenting issue, and any other issues related to the relationship of this application to its parent.

### **Support for Amendments:**

1. The amendment to the abstract is supported by paragraphs [0034] (lines 9 & 10 as filed) and [0040] (lines 15-17), as well as by Claim 4 as filed on November 10, 2003.
2. The amendment to paragraph [0038] is a grammatical correction, which fixes a run-on sentence wherein a period was by typographical error inadvertently omitted. The change is supported by the language present at filing, as it would have been understood, and no further support is believed to be required for this grammatical correction.
3. Applicant also amends the application by submission of the enclosed terminal disclaimer. No support is believed to be necessary for such a disclaimer. Discussion of the disclaimer is addressed below.

### **Discussion of Amendments (Including Disclaimer):**

The Application has been allowed, but Applicant requested withdrawal from issue to:

- (1) To obtain entry of the amendments to the Abstract (to better reflect the claim that now alone remains in the application), and to Paragraph [0038] for grammatical reasons; and
- (2) To raise to the examiner's attention the fact that there was no restriction requirement in the parent application that would have prevented a requirement of a terminal disclaimer, and to have expressly considered by the office whether this application should be redesignated as a "continuation" rather than a "divisional," now that the method claim (Claim 1) has been cancelled, leaving only apparatus claims (the parent - now U.S.

Patent 6,666,147 - having issued with apparatus claims and no method claim). Applicant recognizes that Office materials acknowledge the possibility of redesignation (See, e.g., MPEP 201.06(c)(ix) (referring to redesignation of a continuation or divisional to be a continuation in part), and that the redesignation may be within the Office's discretion (See Official Gazette 5 Sept. 2000, available at <http://www.uspto.gov/web/offices/com/sol/og/2000/week36/patdept.htm>, ("The expressions 'continuation,' 'divisional,' and 'continuation-in-part' are merely terms used for administrative convenience.")); and

- (3) To enter a Terminal Disclaimer (attached hereto) to overcome any potential issues related to obviousness-type double patenting.

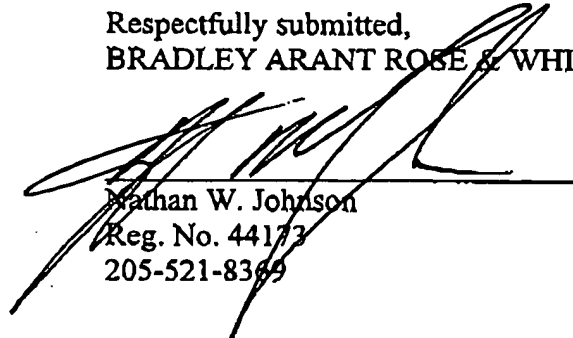
This application is a continuing application, but no restriction requirement was levied in the parent. On the date of filing, the cross reference to the parent application in paragraph [0001] (and possibly other filing documents) referred to the application as a Divisional. At that time, this application included method claim 1, which now has been cancelled, leaving only apparatus claims.

The Applicant requests that the Examiner accept this new submission under the rules of RCE practice, enter the requested amendments, and enter the terminal disclaimer into the record. Further to these amendments, and considering the terminal disclaimer, Applicant respectfully submits that this Application is once again in condition for allowance and respectfully requests such allowance be granted.

**Fees:**

The undersigned authorizes the charge of any underpayment of the fees in connection with this correspondence to Deposit Account 50-0954.

Respectfully submitted,  
BRADLEY ARANT ROSE & WHITE LLP

  
Nathan W. Johnson  
Reg. No. 44173  
205-521-8369

7-5-05

ATTACHMENTS – RCE Request Form (precedes this paper)  
Terminal Disclaimer (Appendix)

Appendix

TERMINAL DISCLAIMER